

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ALLSTATE INSURANCE
COMPANY, et al.,

Plaintiffs,

v.

OBTEEN N. NASSIRI, D.C., et al.,

Defendants.

2:08-CV-369 JCM (GWF)

ORDER

Presently before the court is Adam Kutner's motion for district judge to reconsider. (Doc. #356). Kutner moves this court to reconsider Magistrate Judge Foley's denial of Kutner's emergency motion to quash or modify subpoena. (Doc. #355). Plaintiffs filed an opposition. (Doc. #357). Kutner did not reply.

Plaintiffs have scheduled Kutner's deposition on five different dates during the last year. Kutner had three weeks' notice before the last scheduled deposition date. However, Kutner waited until three business days before filing the emergency motion to quash. (*See* Doc. #355). In the order denying Kutner's motion to quash, Magistrate Judge Foley noted the "untimely" nature of the motion. (Doc. #355). Additionally, Magistrate Judge Foley found that Kutner would suffer no undue burden in light of the three weeks notice of the deposition. (Doc. #355).

The magistrate judge issued the order denying Kutner's emergency motion on September 30, 2011. (Doc. #355). Kutner waited until the next business day, October 3, 2011, just one day before the scheduled deposition, to file his motion to reconsider with this court. (Doc. #356). Kutner failed

1 to appear at the October 4, 2011, deposition. (Doc. #357). Plaintiffs then filed a response to the
2 motion to reconsider on October 5, 2011, one day after the scheduled deposition. (Doc. #357).

3 When reviewing the magistrate judge's order, this court determines whether it is clearly
4 erroneous or contrary to law. *See* Fed. R. Civ. P. 72(a); Local Rule IB 3-1. The magistrate judge's
5 order is "clearly erroneous" if this court is left with "a definite and firm conviction that a mistake
6 has been committed." *See United States v. U.S. Gypsum Co.*, 333 U.S. 364, 395 (1948); *Burdick*
7 *v. Comm'r IRS*, 979 F.2d 1369, 1370 (9th Cir. 1992). However, "[w]hen reviewing discovery
8 disputes . . . the [m]agistrate is afforded broad discretion, which will be overruled only if abused."
9 *Tafas v. Dudas*, 530 F. Supp. 2d 786, 792 (E.D. Va. 2008).

10 To the extent Kutner's motion to reconsider is not moot, the court affirms the magistrate
11 judge's denial of the emergency motion to quash or modify subpoena. Kutner first argues that his
12 motion to quash or modify subpoena was timely because it was filed within the time period allowed
13 by Federal Rule of Civil Procedure 45(c)(2). However, Rule 45(c)(2) is inapplicable to the case at
14 bar. Instead, Kutner's motion to quash or modify is governed by Rule 45(c)(3), which requires a
15 "timely motion." *See* FED. R. CIV. P. 45(c)(3). The court is inclined to agree with the magistrate
16 judge; Kutner's motion was untimely. Kutner had three weeks notice of the deposition, yet filed his
17 motion only three business days before the deposition's scheduled date. The magistrate judge did
18 not commit clear error when he found Kutner's motion untimely.

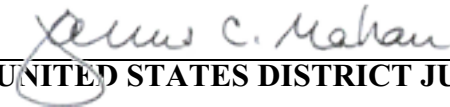
19 Kutner also asserts that scheduling the deposition on a work day will be unduly burdensome.
20 In the order denying the motion to quash or modify subpoena, the magistrate judge found that this
21 assertion was without merit. (Doc. #355). The magistrate judge stated that Kutner "has had
22 sufficient time to take the necessary steps to ensure that his law practice can operate without his
23 presence during the scheduled deposition time." (Doc. #355). Again, the court is inclined to agree
24 with the magistrate judge. Further, even if the court were not inclined to agree with the magistrate
25 judge, the magistrate judge's order is not "clearly erroneous" or contrary to law. *See U.S. Gypsum*
26 *Co.*, 333 U.S. at 395; *Burdick*, 979 F.2d at 1370 (9th Cir. 1992).

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Accordingly,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Adam Kutner's motion for district judge to reconsider (doc. #356) be, and the same hereby is, DENIED.

DATED this 14th day of October, 2011.


UNITED STATES DISTRICT JUDGE